

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DONALD KEITH NICKLO,

Petitioner

v.

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CIVIL ACTION NO. 1:07CV81  
CRIMINAL NO. 1:04CR39-1  
(Judge Keeley)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION

On June 15, 2007, pro se petitioner Donald Keith Nicklo, filed a petition pursuant to 28 U.S.C. § 2255. On August 10, 2007, United States Magistrate Judge John S. Kaul determined that the petition appeared to be untimely and issued a notice to the petitioner in accordance with Hill v. Braxton, 277 F.3d 701, 707 (4<sup>th</sup> Cir. 2002), advising him that the Magistrate Judge would recommend dismissal of his case unless he could show that his motion was timely. The petitioner never responded to this notice.

On October 25, 2007, the Magistrate Judge entered a Report and Recommendations ("R&R") recommending that this Court deny petitioner's motion and dismiss the case with prejudice. The Report and Recommendation also specifically warned that the failure to object to the recommendation would result in the waiver of any appellate rights on this issue. No objections were filed.<sup>1</sup>

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<sup>1</sup> The failure to object to the Report and Recommendation not only waives the appellate rights in this matter, but also relieves the Court of any obligation to conduct a de novo review of the issue presented. See Thomas v. Arn, 474 U.S. 140, 148-153 (1985); Wells v. Shriners Hosp., 109 F.3d 198, 199-200 (4<sup>th</sup> Cir. 1997).

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Based on the petitioner's failure to object, the Court **ADOPTS** the Report and Recommendation in its entirety and **DENIES** the motion (Dkt. No. 19 in 1:04CR39-1 and Dkt. No. 1 in 1:07CV81). It, therefore, **ORDERS** that this case be **DISMISSED WITH PREJUDICE** and **STRICKEN** from the Court's docket.

The Clerk is directed to mail a copy of this Order to the pro se petitioner, certified mail, return receipt requested and to counsel of record.

Dated: November 13, 2007.

/s/ Irene M. Keeley  
IRENE M. KEELEY  
UNITED STATES DISTRICT JUDGE